



## WOMEN'S STATE LEGISLATIVE COUNCIL OF UTAH

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*SALT LAKE CITY, UTAH*

### RESOLUTION IN SUPPORT OF: HB171 CUSTODIAL INTERROGATION AMENDMENTS

*Whereas*, Young people are prone to confessing falsely. Juveniles account for as much as **one third** of documented false confessions.

*Whereas*, The psychological impact of being wrongfully accused and convicted of a crime are extreme and long-lasting.

*Whereas*, Deceit used by investigations diminishes the community's trust in law enforcement and may lead to community members not cooperating with law enforcement during investigations.

*Resolved*, That the Women's State Legislative Council of Utah supports HB 171 – Custodial Interrogation Amendments to prohibit law enforcement from use of deception in a custodial interrogation

Passed unanimously by the WSLC board on the 2nd day of February 2022.

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Erin Preston,  
President  
Women's State Legislative Council

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Kari Malkovich,  
First Vice-President  
Women's State Legislative Council

## CUSTODIAL INTERROGATION AMENDMENTS HB171

### OVERVIEW

Young people are prone to confessing falsely. Juveniles account for as much as **one third** of documented false confessions. The bill prohibits the use of deceptive tactics when a juvenile is in custody and being interrogated by a member of law enforcement. Doing so, this bill encourages members of law enforcement to utilize alternative interrogation techniques that have been demonstrated to be more effective in producing reliable confessions from suspects.

### WHAT THE BILL DOES

When a child is subjected to a custodial interrogation law enforcement may not use deception as a means to elicit an incriminating response.

If deception is used during custodial interrogation of a youth, any statements made are presumed inadmissible. This presumption may be rebutted by a preponderance of the evidence that the statement was voluntarily given, based on the totality of the circumstances.

### EXAMPLES OF DECEPTION

**FALSE FACTS** - *"We have your fingerprints on the gun."* - When the interrogating member of law enforcement personally knows that there has been no determination of whether the person's fingerprints are on the gun.

**LENIENCY** - *"If you confess to the murder, I can guarantee that you will not be charged with murder but, instead a lesser charge"* - When the interrogating member of law enforcement knows that they do not have the authority to guarantee a lesser charge.

### WHY DECEPTION IS HARMFUL

More than 30% of wrongful convictions proven by DNA evidence have involved false confessions. Further, when an innocent person's freedom is taken the public is also put at risk by allowing actual perpetrators to remain free. Of the first 375 exonerations based on DNA evidence, the true perpetrators were subsequently detected in 50% of those cases. These 165 people committed an additional 154 violent crimes while an innocent person took their place in prison.

#### Harm to Victims

- Victims describe the impact of wrongful convictions as comparable to—or worse—than their original victimization. Many expressed feelings of guilt and some experienced helplessness, devastation, and depression.
- Wrongful convictions allow the real perpetrator to escape justice.

#### Harm to Youth

- Court-involved adolescents are more likely to have intellectual disabilities and/or cognitive delays compared to other adolescents.



- Children and those with intellectual disabilities are disproportionately likely to give false or unreliable confessions because they are inherently less equipped to cope with stressful police interrogations.
- Adolescents are likely to make choices that reflect a propensity to comply with authority figures, such as confessing rather than remaining silent.
- The psychological impact of being wrongfully accused and convicted of a crime are extreme and long-lasting.

#### Harm to Taxpayers and the Public

- The costs of settlements that stem from wrongful convictions and the unnecessary costs that stem from incarcerating an individual who is innocent.
- The costs that may arise from re-opening cases, identifying the actual offender, and re-prosecuting a case from which there was a false confession.
- Convicting the wrong individual results in actual perpetrators still being in communities with the ability to commit another offense.
- Deceit used by investigations diminishes the community's trust in law enforcement and may lead to community members not cooperating with law enforcement during investigations.
- The cost of juvenile secure care incarceration in Utah is nearly \$200,000 a year.
- Utah's Postconviction Remedies Act provides compensation to factually innocent. An exoneree would be entitled to \$49,620 for each year of incarceration, up to \$744,300.

#### **WHAT EXPERTS ARE SAYING**

*"The use of deception also may cause an innocent juvenile – even one who initially had a clear recollection of not committing a crime – to mistrust his memory, accept that the "evidence" proves his guilt, and eventually confess to a crime that he did not commit...**the pressures of deception-driven interrogation can actually cause a juvenile to believe that he must have committed the crime but suppressed all memories of it.***

- Reducing Risks: An Executives Guide to Effective Juvenile Interrogation, The International Association of Chiefs of Police

*"While law enforcement professionals collectively agree that they want to prevent false confessions, it is also important to understand the risk of an unreliable true confession when trickery or deceit are used. **Even with a guilty suspect, the use of false evidence may contaminate the subject's statements or be contradictory to the truth.** These contradictions or contaminations provide an inconsistent account of what occurred, potentially impacting the credibility of a confession.*

- David Thompson, Partner, Wicklander-Zulawski & Associates

***"As a former intelligence officer who has interrogated foreign military officers, terrorists, and violent extremists, I have learned that the truth is something to be leveraged not hidden.** Similarly, through my work with law enforcement professionals from across this nation, I am convinced that diligent investigative work and systematic interviewing skills will reliably uncover the truth even within the most complex cases... in a fashion that substantially reduces the incidence of false confessions"*

- Steven M. Kleinman, Colonel, U.S. Air Force (Ret.)

*"Introducing false evidence also risks contaminating the defendant's own memory; he or she may come to believe not only that the false evidence is true but that they have a memory of it (a false information effect). And, finally, lying threatens the rapport critical to cooperation, thus further reducing the likelihood of gaining information that can protect the innocent and identify the guilty."*

- Susan E. Brandon, Fmr. Research Program Manager U.S. High-Value Detainee Interrogation Program

*"The use of deception in obtaining confessions has been shown unequivocally by an extensive international body of research to result in an increased likelihood of inducing a false confession, particularly with vulnerable detainees. Sanctioned deception by an investigator serves to undermine the legitimacy of the court and wider principles of justice."*

- Gary Pankhurst and Dr. Genevieve Waterhouse, Co-Directors, International Investigative Interviewing Research Group

**"The knowing use of deception by law enforcement during the interrogation process should be prohibited."**

*"[I]n the absence of sufficient and rigorous standards and safeguards, interrogations of children too frequently result in coerced and false statements, miscarriages of justice, and tremendous harm to young people – all of which in turn undermine confidence and trust in the criminal legal system and thereby erode public safety."*

- Fair and Just Prosecution, Youth Interrogation: Key Principles and Policy Recommendations

#### **STATE TRENDS:**

Illinois - 2021 (supported by Office of Cook County State's Attorney, Illinois Chiefs of Police, & Illinois State's Attorney Association supported similar legislation in Illinois)

Oregon - 2021 (supported by Oregon Association of Chiefs of Police, Oregon State Sheriffs' Association supported similar legislation in Oregon)

\*Pending in Florida & New York

#### **SUPPORTED BY:**

- Wicklander-Zulawski & Associates, Inc. (leading law enforcement consulting and training organization specializing in interrogation methods)
- Innocence Project
- Rocky Mountain Innocence Center
- Libertas Institute
- Utah Association of Criminal Defense Lawyers
- Utah Juvenile Defenders Attorneys
- ACLU